

TRICENTROL UNITED STATES, INC.

IBLA 86-113

Decided May 27, 1987

Appeal from a decision of the Lewistown District Office, Lewistown, Montana, Bureau of Land Management, imposing an assessment of \$ 250 for failure to comply with a written order of the authorized officer.

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Unit and Cooperative Agreements

Departmental regulations at 43 CFR Part 3160 governing onshore oil and gas operations apply to facilities located on private leases which participate with Federal and/or Indian leases under a unit agreement approved by the Department's authorized officer. Accordingly, a unit operator is required to submit site facility diagrams of facilities located on such private leases under 43 CFR 3162.7-4(d)(1) to aid BLM in accounting for production and royalties allocated to the Federal and/or Indian leases.

2. Oil and Gas Leases: Civil Assessments and Penalties -- Oil and Gas Leases: Incidents of Noncompliance

BLM may properly render an assessment of \$ 250 under 43 CFR 3163.3(a) against a unit operator who fails to comply with a written order to submit site-facility diagrams for all facilities located on lands subject to a unit agreement approved by the Department's authorized officer, whether those facilities are located on private, Federal, or Indian leases. The \$ 250 assessment for noncompliance with BLM's written order is a one-time charge per violation under 43 CFR 3163.3.

APPEARANCES: Louis R. Moore, Esq., Billings, Montana, for appellant; Richard K. Aldrich, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Billings, Montana, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Tricentrol United States, Inc. (Tricentrol), has appealed from the September 23, 1985, decision of the Lewistown District Office, Lewistown, Montana, Bureau of Land Management (BLM), levying an assessment of \$ 250 against Tricentrol pursuant to 43 CFR 3163.3(a) (1985) (current version at 43 CFR 3163.1(a), 52 FR 5393 (Feb. 20, 1987)) for failure to comply with a written order of BLM's authorized officer.

In mid-1985, BLM requested by letter that Tricentrol submit, in accordance with 43 CFR 3162.7-4(d)(1), site-facility diagrams of existing facilities for wells on patented lands in certain Federal units operated by Tricentrol. ^{1/} The Federal units were identified as the Bullhook, Huebschwerlen, Huebschwerlen Areas A-G, Sherard, Sherard A-H, and Tiger Ridge Units. On July 12, 1985, BLM granted an extension to September 15, 1985, for the submission of the schematic drawings. Tricentrol filed the required schematic drawings for facilities in all the units, except the Bullhook and Tiger Ridge Units. Consequently, on September 25, 1985, BLM levied an assessment of \$ 250 against Tricentrol, pursuant to 43 CFR 3163.3(a), for its failure to provide schematic drawings for wells located within the Bullhook and Tiger Ridge Units.

In its statement of reasons for appeal, Tricentrol contends that the wells for which BLM has requested schematic drawings are located on private lands, although those lands are part of units which include Federal and/or Indian leases in nominal amounts. Tricentrol and BLM agree that the Bullhook Unit contains Federal and Indian leases amounting to 8.31056 and 6.03006 percent, respectively, and that the Tiger Ridge Unit contains Federal leases comprising 6.870 percent. According to Tricentrol, "[b]ecause of the existence of these minimal percentages of Federal and/or Indian leases within each unit," BLM approved the unit agreements "on the so-called 'nonfederal' form and thereby entered into a binding contract which omitted the various provisions of the federal form which make operations within the unit subject to existing and future federal regulation" (SOR at 2-3).

Tricentrol bases this argument upon section 1 of the Bullhook and the Tiger Ridge Unit Agreements, which provides:

1. Enabling Act and Regulations. The Mineral Leasing Act of February 25, 1920, as amended, *supra*, and all valid, pertinent regulations, including operating and unit plan regulations, heretofore issued thereunder or valid, pertinent and reasonable regulations hereafter issued thereunder are accepted

^{1/} Tricentrol stated it received the letter on May 14, 1985 (Statement of Reasons (SOR) at 3). The record includes a statement in a Sept. 23, 1985, letter from BLM to Tricentrol that the requesting letter was sent on July 8, 1985. The record does not include a copy of the letter; however, there is no dispute concerning its contents.

and made a part of this Agreement as to Federal [and Indian Lands], [2/] provided such regulations are not inconsistent with the terms of this Agreement. [Emphasis added.]

This provision of the unit agreements, according to Tricentrol, establishes that regulations promulgated pursuant to the Mineral Leasing Act of 1920 (MLA), as amended, 30 U.S.C. §§ 181-263 (1982), are applicable only to Federal and/or Indian leases. "By clear implication, non-Federal and non-Indian Lands would not be subject to such existing or future regulation" (SOR at 4). In short, appellant asserts the regulation cited by BLM in requesting the site facility diagrams does not apply to the private lands within the Bullhook and Tiger Ridge Units.

In its answer, BLM maintains that the "need for the data requested is to assure the proper accounting for production from all facilities within the units, federal/Indian and private" (Answer at 1). In a January 8, 1986, memorandum to the Field Solicitor, Billings, Montana, the Deputy State Director, Division of Mineral Resources, Montana State Office, explained that schematic drawings of facilities on private lands, which are included with Federal and/or Indian lands in a unit, are necessary in order to "track federal and Indian production as it is combined with other production from the unit" (Answer, Exh. 1 at 1). In summary, BLM states that "[t]he total unit production must be accounted for to properly account for the Federal/Indian interest. * * * To accomplish this, all unit schematics must be available for review" (Answer, Exh. 1 at 2, emphasis in original).

[1] On September 21, 1984, the Department published final rules in the Federal Register which revised the existing regulations governing onshore Federal and Indian oil and gas lease operations by adding new provisions designed to implement those provisions of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. §§ 1701-1757 (1982), which apply to onshore field operations. See 49 FR 37356 (Sept. 21, 1984). 3/ The stated purpose of the revised regulations was to "govern operations associated with the exploration, development and production of oil and gas deposits from leases issued or approved by the United States, restricted Indian land leases and those under the jurisdiction of the Secretary of the Interior by law or administrative arrangement, including the National Petroleum Reserve -- Alaska." (Emphasis added.) 43 CFR 3160.0-1. Those regulations amended the definition of the term "lease" to mean "[a]ny contract, profit-share arrangement, joint venture, or other agreement issued or approved by

2/ Only the Bullhook Unit Agreement includes the bracketed phrase, since the Tiger Ridge Unit contains no Indian lands.

3/ On Aug. 12, 1983, the regulations contained in Title 30 of CFR concerning lease operations and unit agreements involving onshore oil and gas leases, previously administered by the Minerals Management Service, were redesignated as BLM regulations at Title 43 of CFR. 46 FR 36582 (Aug. 12, 1983). Thus, 30 CFR Part 221 was redesignated as 43 CFR Part 3160.

the United States under a mineral leasing law that authorizes exploration for, extraction of, or removal of oil or gas." 4/ 43 CFR 3160.0-5.

Tricentrol derives support from the preamble to the amended regulations at 43 CFR Part 3160 for its argument that the Department's regulations governing onshore oil and gas lease operations do not apply to private lands. One comment to the proposed regulations advised that the above-quoted "definition of the term 'lease', when taken in context with the definition of the term 'lease site' 5/ and 'lessee' 6/ is broad enough to include private and State lands included in Federal units and suggested that all the definitions be strictly limited so that they apply only to Federal and Indian leases." 49 FR 37357 (Sept. 21, 1984).

The Department rejected the suggestion, providing the following rationale for doing so:

The principle of unitization, or other pooling, is that operations on any committed lease are deemed to be on or for the benefit of any other committed lease. Since all committed leases within a communitized area or unit participating area share in the total production from the communitized tract or participating area regardless of the ownership of the mineral estate where the wells are located, the Bureau of Land Management must have some limited authority to obtain needed data and to inspect non-Federal and non-Indian sites to assure that the Federal and Indian interests are protected. This limited authority is spelled out in the formal agreement, i.e., unit, communitization or gas storage. If the agreement fails to provide such limited authority to the Bureau or if the United States merely accepts the agreement rather than formally approving it, usually in the case of nominal Federal or Indian interest ownership therein, these regulations do not apply to operations on private or State lands. [Emphasis added.]

4/ The previous definition of the term "lease," originally promulgated on June 2, 1942 (7 FR 4132), was far more general: "An agreement which in consideration of covenants to be observed, grants to a lessee the exclusive right and privilege of developing and producing oil or gas deposits owned by the lessor subject to the regulations in this part."

5/ The term "lease site" is defined to mean "[a]ny lands, including the surface of a severed mineral estate, on which exploration for, or extraction and removal of, oil or gas is authorized pursuant to a lease." 43 CFR 3160.0-5.

6/ The term "lessee" is defined to mean

"[t]he party authorized by or through a lease or an approved assignment thereof, to explore for, develop and produce oil and gas on the lease site in accordance with the lease terms, regulations, and law. For convenience of reference throughout this part, the term lessee also refers to and includes the owners of approved operating rights and designated operators." 43 CFR 3160.0-5."

Id. Tricentrol centers upon the underlined portion of the above quote, arguing that both the Bullhook and the Tiger Ridge Units contain only "nominal" Federal and/or Indian interests, and that the unit agreements do not provide BLM with "any authority" to obtain site-facility diagrams for facilities on private lands (SOR at 5).

The Bullhook and Tiger Ridge Unit agreements do not expressly provide BLM with the limited authority to obtain data and to inspect wells on private lands in those units. Therefore, we turn to the regulations to determine whether they provide such authority.

The September 21, 1984, version of 43 CFR 3161.1, in effect at the time BLM requested the schematic diagrams, provided that the onshore oil and gas operations regulations applied to "all operations conducted on or for the benefit of a Federal or Indian oil and gas lease, by, or on behalf of, the lessee * * *." (Emphasis added.) ^{7/} The preamble which rejected the suggestion that the term "lessee" be limited expressly to Federal and Indian lands

^{7/} On January 30, 1986, the Department proposed revisions to the FOGPMA regulations. 51 FR 3882. Among the regulations proposed for amendment was 43 CFR 3161.1, which would read as follows:

"(a) All operations conducted on a Federal or Indian oil and gas lease by, or on behalf of, the lessee are subject to the regulations in this part.

"(b) Regulations in this part relating to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements are applicable to wells and facilities on State or privately-owned mineral lands committed to a unit or communitization agreement which affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary."

(Emphasis added.) The Department offered the following explanation for this change:

"The preamble to the final rulemaking published on September 21, 1984, stated that the Bureau of Land Management had limited authority over non-Federal and non-Indian sites within federally supervised unit and communitization agreements. It did not specify which regulations were applicable to such operations. This proposed rulemaking clarifies that, unless additional responsibilities are specified in the formal agreement, regulations related to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such requirements are applicable to all wells or facilities on State or privately-held mineral lands which affect Federal or Indian interests through unitization, communitization, or similar agreements."

(Emphasis added.) 51 FR 3883 (Jan. 30, 1986).

Proposed 43 CFR 3161.1 was adopted without further change, although "[s]everal comments on this section suggested that the effect of these regulations should not be extended to cover operations conducted on private or fee lands within units and communitized areas." 52 FR 5386 (Feb. 20, 1987). The preamble to the final rulemaking further explains why 43 CFR 3161.1 was clarified:

sets forth a rationale which requires application of site security regulations to private lands which are communitized or pooled with Federal or Indian lands: "[O]perations on any committed lease are deemed to be on or for the benefit of any other committed lease." 49 FR 37357 (Sept. 21, 1984). Thus, "all committed leases within a communitized tract or participating area share in the total production from the communitized tract or participating area regardless of the ownership of the mineral estate where the wells are located * * *." Id. This analysis is consistent with the Board's statement in Marathon Oil Co., 68 IBLA 191, 192 (1982), that "[o]perations or production pursuant to [an approved communitization] agreement shall be regarded as operations or production for each lease committed to the agreement."

This concern with protecting Federal interests in a unit which includes private mineral lands is reflected in 43 CFR 3161.3(a), which confers authority upon BLM to inspect such private lands:

The authorized officer shall establish procedures to ensure that each Federal and Indian lease site which is producing or is expected to produce significant quantities of oil or gas in any year or which has a history of noncompliance with applicable provisions of law or regulations, lease terms, orders or directives shall be inspected at least once annually. Similarly, each lease site on non-Federal or non-Indian lands subject to a formal agreement such as a unit or communitization agreement which has been approved by the Department of the Interior and in which the United States or the Indian lessors share in production shall be inspected annually whenever any of the foregoing criteria are applicable.

This regulation, when read with 43 CFR 3160.0-1 concerning general application of the oil and gas regulations relating to site security, reflects the

fn. 7 (continued)

"These comments suggested that a Federal or Indian interest of less than 10 percent of a unit or participating area be the basis for exempting those operations from Federal regulation. The proposed rulemaking contains language requiring that, unless specifically modified in any agreement the regulations relating to site security, measurement, reporting of production and operations, and assessments of penalties for noncompliance with such requirements are applicable to all wells or facilities on State or privately-held mineral lands which affect Federal or Indian interests through agreements. The fact that Federal or Indian lands are committed to agreements for the purpose of drilling and development of those lands in the most beneficial manner is all that is needed to establish the responsibility of the Bureau of Land Management to ensure that the intent of the Federal Oil and Gas Royalty Management Act and other mineral leasing laws as to royalty accountability is carried out on those lands. Therefore, the suggestions in the comments have not been accepted and the final rulemaking has adopted the language of the proposed rulemaking without change." (Emphasis added.) 52 FR 5386 (Feb. 20, 1987).

intent of the Department that those regulations apply to lease operations on private lands when they participate with Federal leases in a unit agreement. The result would be anomalous if we were to conclude that BLM has the authority pursuant to 43 CFR 3161.3 to inspect private lands subject to a formal unit agreement to ensure compliance with the onshore oil and gas regulations, but that BLM lacks the authority to acquire schematic diagrams of wells on those same lands for purposes of monitoring allocation and participation under the unit agreements.

Tricentrol argues that BLM intended that "any extension of authority to obtain data [be restricted] to communitized areas and unit participating areas, a clear indication that the Department was not contemplating 'non-federal' forms of unit agreements which do not contain participating provisions" (SOR at 5). Tricentrol is mistaken about the nature of the unit agreements involved herein. Those agreements reflect a concern with protection of Federal leases committed to the units. Thus, the recitals portion of the agreements states:

WHEREAS, the Mineral Leasing Act of February 25, 1920, 41 Stat. 437, as amended, 30 U.S.C. Secs. 181, et seq., authorized Federal lessees and their representatives to unite with each other, or jointly or separately with others, in collectively adopting and operating a co-operative or unit plan of development or operation of any oil or gas pool, field or like area, or any part thereof for the purpose of more properly conserving the natural resources thereof whenever determined and certified by the Secretary of the Interior to be necessary or advisable in the public interest; * * *."

Moreover, Tricentrol's perception that the authorized officer "accepted" the unit agreements rather than "approved" them is erroneous. On April 20, 1972, the Oil and Gas Supervisor, United States Geological Survey, formally approved the Tiger Ridge Unit Agreement, and on December 19, 1972, the Area Director, Bureau of Indian Affairs, formally approved the Bullhook Unit Agreement, both "Certification-Determination" documents stating that approval "is necessary and advisable in the public interest and is for the purpose of more properly conserving the natural resources." In response to Tricentrol's statement that the unit agreements involved herein do not contain participating area provisions, we will simply refer to section 12 of the agreements which sets forth factors and formulas to be used in calculating allocation and participation of production among the tracts committed to the unit.

The regulations at 43 CFR Part 3160 relating to site security, measurement, reporting of production and operations, and assessments or penalties for noncompliance with such regulations, implement the findings and purposes specified by Congress in FOGPMA. Section 2 of FOGPMA, 30 U.S.C. § 1701 (1982), articulates the finding of Congress that "it is essential that the Secretary initiate procedures to improve methods for accounting for * * * royalties and payments and to provide routine inspection of activities related to the production of oil and gas on * * * lease sites [on Federal and Indian lands] * * *." (Emphasis added.)

We conclude that operations on private lands committed to a unit agreement which includes Federal and/or Indian lands are "related to the production of oil and gas" on those Federal and/or Indian lands, since production on any lease committed to the unit agreement is deemed to be for the benefit of all other leases committed to that unit. Marathon Oil Co., 68 IBLA at 192. In addition, section 2 of FOGRMA, 30 U.S.C. § 1701(b)(3) (1982), states as one of FOGRMA's purposes, "to require the development of enforcement practices that ensure the prompt and proper collection and disbursement of oil and gas revenues owed to the United States and Indian lessors and those inuring to the benefit of States * * *." Application of the regulations at 43 CFR Part 3160 to private lands committed to unit agreements such as those involved in this appeal furthers that stated purpose.

In its answer, BLM explains how requiring a unit operator to submit schematic drawings of all facilities located on lands committed to unit agreements approved by the Department, whether private, Federal, or Indian, relates to and facilitates BLM's accounting and disbursement responsibilities under FOGRMA and implementing regulations:

The BLM is attempting to determine the proper handling and measurement of the federal and Indian share of production from participating areas within these units. The federal government must know the flow pattern of all installations, by the possession of schematics and a knowledge of measuring instrument designs of all the equipment in a participating area in which the gas is commingled or sold to several customers, in order to determine its/Indians' fair share of the produced gas. Not knowing this information could result in some gas being mistakenly or illegally measured or sold. This, especially, is true when the government/Indians' [sic] have royalty interests in common with other interests, as is the case for the Bullhook and Tiger Ridge Units. Even if a particular portion of the unit is all nonfederal/non-Indian, and is independently measured, we must have schematics of these facilities to assure ourselves that proper handling and measurement is, in fact, occurring.

(Answer, Exh. 1 at 3).

We reject Tricentrol's argument that application of FOGRMA and implementing regulations is unwarranted, since the unit agreements provide that "only Regulations promulgated pursuant to the Mineral Leasing Act will become part of the agreement * * *" (SOR at 6). As pointed out by BLM, FOGRMA incorporates MLA requirements into its enforcement provisions, providing that any person who, after notice of violation fails to comply "with any of the requirements of this Act or any mineral leasing law, [or] any rule or regulations thereunder" will be liable for penalties as established in section 109. 30 U.S.C. § 1719 (1982). (Reply at 2; emphasis added.) Moreover, section 305 of FOGRMA states that its provisions apply to oil and gas leases issued prior to the date of enactment, unless such application would alter the express provisions of such lease. 96 Stat. 2461-62. Finally, this Board does not have the authority to consider Tricentrol's challenge to

the constitutionality of FOGRMA, or the regulations promulgated thereunder by the Department. E.g., Ptarmigan Co., 91 IBLA 113, 116 (1986).

We conclude that BLM's jurisdiction under the regulations at 43 CFR Part 3160, in existence when BLM's request was made in this case, extended to private lands included in a unit with Federal and/or Indian lands, and that BLM properly exercised its authority in requesting the schematic diagrams of facilities located on such private lands. 8/

[2] In a September 23, 1985, letter, BLM notified Tricentrol that it was being assessed \$ 250 under 43 CFR 3163.3(a), for failure to comply with BLM's request that the schematic diagrams be submitted by September 15, 1985. Previously, on March 22, 1985, the Department suspended certain portions of 43 CFR 3163.3, including subsection (h), which provides that a lessee may be assessed \$ 100 "[f]or failure to maintain records and file required reports, records, samples, or data as required by the regulations in this part and by applicable orders and notices * * *." 50 FR 11517 (Mar. 22, 1985). This Board ruled in Fuel Resources Development Co., 91 IBLA 242 (1986), that "[w]hoever fails to file the required [site facility] diagrams may be assessed \$ 100 pursuant to 43 CFR 3163.3(h)." However, the Board vacated an assessment imposed under 43 CFR 3163.3(h), since that regulation had been suspended on March 22, 1985.

We find nothing improper in BLM's utilizing the mechanism embodied in 43 CFR 3163.3(a), which was not suspended by the March 1985 Federal Register notice. Under the regulation, BLM may impose an assessment of \$ 250 against a lessee for "failure to comply with a written order or instructions of the authorized officer, * * * if compliance is not obtained within the time specified." In this case, Tricentrol received the request for schematic drawings and was granted an extension of time for compliance. Tricentrol elected to comply with regard to certain of the units identified in the request, but not for the two involved in this appeal. Under these circumstances, we will uphold BLM's authority to impose the assessment under 43 CFR 3163.3(a). See William Perlman, 96 IBLA 181, 186-87 (1987); Mont Rouge, Inc., 90 IBLA 3, 5 (1985). Under 43 CFR 3163.3 (1985), BLM may assess a one-time liquidated damages charge of \$ 250 for each incident of noncompliance arising from failure to comply with a written order of an authorized officer. 9/ William

8/ This conclusion is consistent with the Department's recent regulatory changes which clarified and particularized the Department's intent concerning the issue in this case. See note 7, supra.

9/ The previous version of 43 CFR 3163.3 (1983) provided that the assessments would be applicable to each successive day of noncompliance. However, that regulation was amended effective Oct. 22, 1984, deleting the provision for continuing assessment of liquidated damages for each day of noncompliance. See 49 FR 37361, 37365 (Sept. 21, 1984). As noted, the revised regulations under 43 CFR 3160 published Sept. 21, 1984, were suspended, in part, by notice published in the Federal Register on Mar. 22, 1985. 50 FR 11517-18. See BLM Instruction Memoranda Nos. 84-594, Change 4 and 85-384, dated

Perlman, 96 IBLA at 186-87; Willard Pease Oil & Gas Co., 89 IBLA 236, 240 (1985).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

Franklin D. Arness
Administrative Judge

C. Randall Grant, Jr.
Administrative Judge.

fn. 9 (continued)

Apr. 16, 1985. However, the suspension did not affect the provisions of 43 CFR 3163.3(a).

In the Department's final rulemaking published in the Federal Register on Feb. 20, 1987, section 3163.3 of 43 CFR was removed. 52 FR 5384. The procedure for assessments for noncompliance is now found at 43 CFR 3163.1, which distinguishes between major and minor violations.